



2143
Patent
LEM1.P946

IN RE APPLICATION OF:
LEMCHEN

SERIAL NO. : 09/746,947

FILED: DEC. 21, 2000

FOR: A METHOD AND APPARATUS
FOR THE USE OF A
NETWORK SYSTSEM FOR
BIOFEEDBACK STRESS
REDUCTION

Examiner: B. Jaroenchonwanit

Group Art Unit: 2143

Request to Withdraw Notice of Abandonment

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In reply to the Notice of Abandonment mailed Oct. 6, 2005, applicant respectfully requests withdrawal of the Notice for the following grounds.

The Office Action was mailed on Oct. 7, 2004 by the Office to the incorrect address and the applicant was not aware of the abandonment or the Office Action until the subject Notice of Abandonment was received. According to PAIR the Office Action was returned to the Patent Office as undeliverable.

On April 17, 2002 applicant filed a Power of Attorney with a **request for Change of Address**. See Exhibit 1. This Irvine, California, address is the current valid address of the undersigned.

On Oct. 7, 2004, more than two years later, the Office sent the first Office Action to an old, invalid Costa Mesa, California, address, which hadn't been valid for

approximately four years. See Exhibit 2.


Between the time of the receipt of the Power of Attorney and the issuance of the Office Action, the Office mailed a Status Reply Letter to the undersigned apparently to the correct address, since it was received in the offices of the undersigned on May 9, 2002.

Had the Office Action been mailed to the same address used to for the Status Reply Letter or had the Change of Address in the Power been noted the Office Action could have been delivered and a timely response filed.

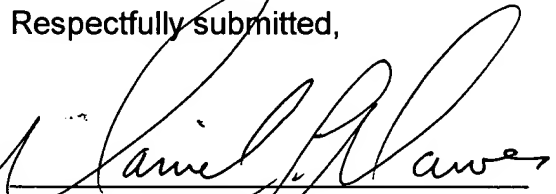
Abandonment occurred without fault of the applicant due to Office error. Withdrawal of the Notice of Abandonment and reissue of the Office Action is respectfully requested.

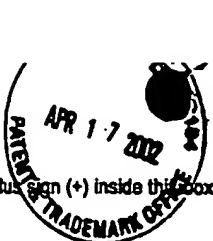
The Director is authorized to charge any additional fees pertaining to this case to Deposit Account No. 01-1960.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on October 19, 2005 by Jo Ann Breen.


Signature
October 19, 2005

Respectfully submitted,


Daniel L. Dawes
Registration No. 27,123
Myers Dawes Andras & Sherman LLP
19900 MacArthur Blvd., 11th Floor
Irvine, CA 92612
(949) 223-9600



COPY OF PAPERS
ORIGINALLY FILED

Please type a plus sign (+) inside this box

PTO/SB/81 (02-01)

Approved for use through 10/31/2002. OMB 0851-0035

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

POWER OF ATTORNEY OR AUTHORIZATION OF AGENT	Application Number	09/746,947
	Filing Date	12/21/2000
	First Named Inventor	Lemchen
	Group Art Unit	2152
	Examiner Name	Unassigned
	Attorney Docket Number	P946

I hereby appoint:

☐ Practitioners at Customer Number

Place Customer
Number Bar Code
Label here

OR

☒ Practitioner(s) named below:

Name	Registration Number
Daniel L. Dawes	27,123
Richard L. Myers	26,490
Joseph C. Andras	33,469
David E. Allred	47,254

as my/our attorney(s) or agent(s) to prosecute the application identified above, and to transact all business in the United States Patent and Trademark Office connected therewith.

RECEIVED

APR 24 2002

Technology Center 2

Please change the correspondence address for the above-identified application to:

☐ The above-mentioned Customer Number.

OR

☐ Practitioner(s) at Customer Number.

Place Customer
Number Bar Code
Label here

OR

<input checked="" type="checkbox"/> Firm or Individual Name	Daniel L. Dawes				
Address	MYERS, DAWES & ANDRAS LLP				
Address	19900 MacArthur Blvd, Ste 1150				
City	Irvine	State	CA	Zip	92612
Country	USA				
Telephone	(949) 223-9600	Fax	(949) 223-9610		

I am the:

☒ Applicant/Inventor.

☐ Assignee of record of the entire interest. See 37 CFR 3.71.

Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96).

SIGNATURE of Applicant or Assignee of Record

Name	Marc S. Lemchen
Signature	
Date	4/2/02

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☒ *Total of 1 forms are submitted.

Burden Hour Statement: This form is estimated to take 3 minutes to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.



UNITED STATES PATENT AND TRADEMARK OFFICE



UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/746,947	12/21/2000	Marc S. Lemchen	P946	2376

7590 10/07/2004
MYERS, DAWES & ANDRAS LLP
Suite 650
650 Town Center Drive
Costa Mesa, CA 92626

EXAMINER	
JAROENCHONWANIT, BUNJOB	
ART UNIT	PAPER NUMBER
2143	

DATE MAILED: 10/07/2004

5

Please find below and/or attached an Office communication concerning this application or proceeding.

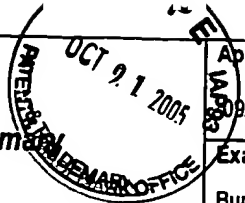
RECEIVED

OCT 19 2004

Technology Center 2100

SP

Office Action Summary



Application No.

809/746,947

Applicant(s)

LEMCHEN, MARC S.

Examiner

Bunjob Jaroenchonwanit

Art Unit

2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 December 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-23 are presented for examination. All claims are analyzed and rejected in light of specification as originally filed. All claims are rejected. The rejections cited are as stated below.

Claim Analysis

2. Claims 1 and 13 are independent claims, directed to a method and system for reducing stress comprising of a computer for generating stress reduction personalized to the user. The system senses user's stress, by a sensor of sensors and feedback the sensed signal to the computer. The computer then adjusts the relax schedule of relax program. Despite the fact that, the instant specification directed to using biofeedback sensor to sense stress signal, i.e., heartbeat, muscle stress, or the like, from users, for adjusting schedule of stress reduction program, e.g., meditation, relaxation, etc. However, applicant should realize that, in addition to breadth of the claims is broad to read on several exercise equipment, the claims language, apparently, vague and missing some elements that amounts the gap in the claim. For instance, claiming, the computer connected to network, the computer executing exercise program, the computer receiving biofeedback from a sensor that sense body stress from the user. The claims, however, does not require, in any way, what to do with biofeedback signal. Thus, in light of specification, the claims read on many conventional exercise equipments, which has readily included such inventive concept, e.g., using biofeedback signal to adjust exercise program, as seen in several well known treadmills equipment, e.g., Nordic track, Pro form.

Claim Rejections - 35 USC § 102

Art Unit: 2143

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-24 are rejected under 35 U.S.C. 102(a) as being anticipated by Douglas et al (US. 6,039,688).

5. Regarding claims 1-24, as aforementioned analysis above, Douglas teaches a method, apparatus and computer program (collectively referred to as “system”, hereinafter) for promoting wellness and improving health, which employing therapeutic behavior monitoring and feedback techniques. The system capable of, among other thing, providing stress management to an appropriate group of users (Col. 5, lines 52-60), by using so called “virtual coach” (Col. 5, line 60-Col. 6, line 67). The virtual coach is a computer couple to a network for downloading or capable of downloading any type or program from remote computer, which resides at physicians or health care locations (Col. 6, lines 14-26). Users’ information can be entered to the computer; the system generates a therapeutic program including goals relating to an exercise level or stress management, by correlating user information (Col. 7, lines 15- 37). The system is capable of provide modified behavior schedule, using personal journal or e-mail. The system changes the schedule based on information, which either input manually by the user or automatically input by sensing devices attached to the user’s body and connected to the computer in the system, e.g.,

Art Unit: 2143

biofeedback (Col. 7, line 54-Col. 8, 5); Col. 8, line 50-Col.9, line 57; Col. 15, line 64-Col. 16, line 25; Col. 18, lines 39-54).

6. Claims 1-4, 10-14 and 22-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Heikkila et al (US. 6,428,476).

7. Regarding claims 1-4, 10-14 and 22-24, as aforementioned analysis above, Heikkila teaches an exercise system, i.e., stress reduction system, comprising a computer coupled to a network (Fig. 5). The computer is capable of generating personalized exercise program from each individual exerciser. The computer is capable of receiving stress signal input from the exerciser (Col. 9, lines 9-43). The computer is capable of communicating over the Internet (Col. 9, lines 44-54). The exerciser received exercise program from his or her instruction, inferred that the computer is capable of generating and transmitting an exercise program the user (Col. 7, lines 43-46).

8. By the above analysis and rationale, claims 1-24 are rejected.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fisslinger discloses another application of using biofeedback signal, i.e., interactive system capable of measuring psychological variable of a user. Despite the fact that the claimed inventions might have been applied to slightly different application, but Fisslinger's teaching contained all elements required for rejecting the inventions as claimed. Applicant is suggested to consider the Fisslinger reference, along with the applied arts, to file an amendment, in which, perhaps could expedite the prosecutions.

Art Unit: 2143

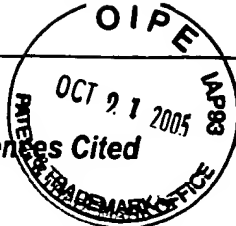
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bunjob Jaroenchonwanit whose telephone number is (703) 305-9673. The examiner can normally be reached on 8:00-17:00.
11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on (703) 308-5221. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.
12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Bunjob Jaroenchonwanit
Primary Examiner
Art Unit 2143

/bj
10/1/04

Notice of References Cited



Application/Control No.

09/746,947

Applicant(s)/Patent Under
Reexamination
LEMCHEN, MARC S.

Examiner

Bunjob Jaroenchonwanit

Art Unit

2143

Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-2003/0149344 A1	08-2003	Nizan, Yaniv	600/300
	B	US-6,039,688 A	03-2000	Douglas et al.	600/300
	C	US-5,720,619 A	02-1998	Fisslinger, Johannes	434/336
	D	US-6,626,803 B1	09-2003	Oglesby et al.	482/54
	E	US-6,428,476 B1	08-2002	Heikkila et al.	600/300
	F	US-2002/0183599 A1	12-2002	Castellanos, Alexander F.	600/300
	G	US-6,458,060 B1	10-2002	Watterson et al.	482/54
	H	US-5,163,439 A	11-1992	Dardik, Irving I.	600/508
	I	US-5,810,737 A	09-1998	Dardik, Irving I.	600/500
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.